

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBEN MUNIZ and U.S. POSTAL SERVICE,
POST OFFICE, Moca, PR

*Docket No. 97-2707; Submitted on the Record;
Issued August 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a nine percent permanent impairment of his left upper extremity for which he has received a schedule award.

On July 9, 1992 appellant, then a 36-year-old postal carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging the he dislocated his left shoulder when a carrier car handle broke and he grabbed and pulled the cart. The Office of Workers' Compensation Programs accepted the claim for dislocation of the left shoulder. The Office paid appellant appropriate wage loss and medical compensation. The Office authorized surgery to correct dislocation of the left shoulder which was performed on February 26, 1996. Appellant returned to limited-duty work on January 21, 1997.

Appellant requested a schedule award for a permanent impairment for his left arm.

In a report dated February 27, 1997, Dr. Efrain D. Deliz, an attending Board-certified orthopedic surgeon, utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.) noted that appellant had 110 degrees abduction; 20 degrees adduction; 40 degrees extension; 50 degrees external rotation; 40 degrees internal rotation; and 130 degrees flexion.

In a May 9, 1997 report, Dr. Deliz determined that appellant was entitled to a 12 percent impairment of his extremity or a 7 percent impairment to the person as a whole. In reaching this determination, Dr. Deliz based upon the A.M.A., *Guides* (4th ed.), found that the range of motion for appellant's left shoulder was as follows: 110 degrees abduction; 20 degrees adduction; 40 degrees extension; 50 degrees external rotation; 40 degrees internal rotation and 140 degrees flexion.

On June 2, 1997 the Office medical adviser reviewed Dr. Deliz's February 27, 1997 report, and found that, based on the A.M.A., *Guides*, appellant was entitled to a 12 percent impairment and that pain was included in this calculation.

By an award of compensation dated June 3, 1997,¹ the Office issued appellant a schedule award of 28.08 weeks of compensation for a 9 percent permanent loss of use of the "right" arm. The period of the award was from February 27 to September 11, 1997.

The Board finds that appellant has a 12 percent impairment of his left upper extremity.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

On appeal appellant contends that he is entitled to a 19 percent impairment based on Dr. Deliz's May 9, 1997 report, which gave him a 12 percent impairment to the his left extremity and a 7 percent impairment to the person as a whole. The Board notes, however, that under the provisions of the Act, a schedule award is not payable for impairment of the body as a whole. Rather, awards are made for impairment for parts of the body specifically enumerated under the Act and its implementing regulations.⁵

In the present case, the record indicates that Dr. Deliz provided range of motion figures in his reports dated February 27 and May 9, 1997. Dr. Deliz estimated that appellant had a 12 percent impairment of the left upper extremity. Thereafter, the Office properly referred the medical record to its Office medical adviser to calculate the percentage of impairment of appellant's left upper extremity.⁶

In assessing appellant's impairment, the Office medical adviser utilized Dr. Deliz's February 27, 1997 report, and following the Office's approved procedures, applied the A.M.A.,

¹ On a copy of the award submitted with appellant's appeal to the Board, it appears that the date is "June 23, 1997."

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ See *James J. Hjort*, 45 ECAB (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ See *Terry E. Mills*, 47 ECAB 309 (1996).

⁶ See *Lena P. Huntley*, 46 ECAB (1995); *Roel Santos*, 41 ECAB 1001 (1990).

Guides to arrive at a 12 percent permanent impairment of the left upper extremity based on the loss of range of motion reported.

The Board has reviewed the impairment assessment contained in the Office medical adviser's June 2, 1997 report and finds that it is in accordance with the A.M.A., *Guides*. The Board notes that the Office medical adviser's conclusion is supported by Dr. Deliz's May 9, 1997 report, which also concluded, that appellant has a 12 percent impairment of the left upper extremity.

In its June 3, 1997 decision, the Office incorrectly awarded appellant a 9 percent impairment for his "right" arm which is unsupported by the medical evidence of record. As noted previously, both the Office medical adviser and Dr. Deliz concluded that appellant had a 12 percent impairment of his left upper extremity. The Board thus finds that the medical evidence establishes that appellant is entitled to a 12 percent permanent impairment of the left upper extremity.

The decision of the Office of Workers' Compensation Programs dated June 3, 1997 is affirmed as modified.

Dated, Washington, D.C.
August 17, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member